IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05-09-2007

CORAM:

THE HONOURABLE MR. A.P. SHAH, CHIEF JUSTICE

THE HONOURABLE MR. JUSTICE D. MURUGESAN
AND
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

W.A.No.968 of 2007

T.K. Ananda Sayanan ... Appellant

Vs.

1. The Joint Registrar
co-operative Societies
Vellore Region
Vellore

2. The Special Officer
Sinampattadai Primary Agricultural
Co-operative Bank, K.R. Thangal Post
Katpadi Taluk, Vellore District. ... Respondents

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Prayer : Writ Appeal under clause 15 of the Letters Patent against the order of the learned Judge Mr.K. Chandru dated 26-03-2007 made in W.P.No.11069 of 2007 presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorari to call for the records of the second respondent pertaining to the order dt. 14.3.2007 and to quash the same.

For appellant :: Mr. G. Jeremiah
For respondents :: Mr. Raja Kalifulla, Govt. Pleader
assisted by Mr. V.R. Thangavelu
Mr. A.L. Somayaji, Senior Counsel
Amicus Curiae appointed to assist the court.

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JUDGMENT

PRABHA SRIDEVAN, J.

The question posed before the Full Bench is whether the protection of Article 21 of the Constitution of India can be invoked in each and every case of suspension, termination or other orders

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passed in relation to the services of an employee of a co-operative society and whether a writ petition can be filed on that basis.

2 (i) The appellant claims to have been given charge as a Secretary of the second respondent-Co-operative Society from 01-09-2006. On 23-01-2007, one Pitchandi was transferred as Secretary of the second respondent. Since the appellant feared that his avenue of promotion would be curtailed, he filed W.P.No.6712 of 2007 to quash the order dated 23-01-2007. Interim order was granted on 26-02-2007 and the petitioner continued as Secretary in the second respondent-society. Thereafter, the second respondent placed the appellant under suspension by order dated 14-03-2007 allegedly in order to circumvent the order of stay.

(ii) The petitioner filed W.P.No.11069 of 2007 to quash the said order of suspension. This was dismissed by the learned Judge on 26-03-2007 relying on the decision of the Larger Bench of this Court in *K. Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal,* 2006 (4) C.T.C. 689.

(iii) On 13-04-2007, W.P. No.6712 of 2007 was allowed and the order appointing the outsider Pitchandi as a Secretary in the Second respondent Bank was set aside. The second respondent has now issued a charge memo dated 09-04-2007 alleging misconduct for not allowing the outsider to join as Secretary.

(iv) Aggrieved therein, the petitioner filed W.A.No.968 of 2007 against W.P.No.11069 of 2007.

3. When the matter came up for admission it was urged by the learned counsel for the petitioner that in *The Special Officer, The Nazarath Urban Co-operative Bank Ltd., Vs. C. Deva Anbu,* 2007 (3) C.T.C. 17, the Division Bench of this Court sitting in Madurai Bench had held that the right of wages of an employee is an integral part to the right to livelihood as held by the Supreme Court in *Konavalov Vs. Commander, Coast Guard Region,* (2006) 4 S.C.C. 620 and therefore, there is a violation of the fundamental rights viz., Article 21 of the Constitution of India and in these circumstances, it is not necessary that the petitioner should seek the alternative remedy. In order to clarify the position and remove the misconceptions that may arise, this matter has been referred to the Full Bench.

4. Mr. A.L. Somayaji, learned Senior Counsel was appointed as Amicus Curiae. He assisted the Court. Mr. Jeremiah, learned counsel appeared on behalf of the appellant and Mr. Raja Kalifullah, learned Government Pleader appeared on behalf of the respondents. We record our appreciation of the counsel and in particular, Mr. A.L.

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Somayaji, learned Senior Counsel for placing the relevant decisions and assisting the Court.

5. In *Marappan Vs. The Deputy Registrar of Co-operative Societies,* 2006 (4) C.T.C. 689, the Larger Bench of this Court laid down certain propositions for guidance as to when a writ petition will lie against a co-operative society. Clause Nos.3 and 4 are relevant and are, therefore, extracted :

> "(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' and 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.
>
> (iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions."

6. Relying on the decisions reported in Marappan's case (cited supra) and Konavalov 's case (cited supra), the Division Bench of the Madras High Court (Madurai Bench) in The Nazarath Urban Co-operative Bank Ltd.'s case (cited supra) had held that "it is settled principle that whenever there is violation of Fundamental Rights the question of seeking alternative remedy is not required and in fact it was repeatedly ruled by the Court of justice that driving a party to seek alternative remedy is only a rule of self-imposed restriction and not an absolute bar and depends upon facts of each case", and that therefore, a writ petition would lie.

7. Konavalov's case arose out of totally different circumstances. A vessel belonging to Ukraine with its crew members was found in the Indian territorial waters. Interim order arresting the vessel was passed and the vessel was arrested and the Master of the ship committed suicide on the same day. A suit was filed and sale of the ship was ordered and the Chief Officer filed an application claiming the seamen's wages from and out of the proceeds of the sale

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of the ship. In the mean time, auction was also initiated under the Customs Act. Alleging that there was dealing with narcotics/drugs the Commissioner of Customs issued a show cause notice to explain why the cargo cannot be confiscated and penalty should not be imposed on the persons under Section 112(a) of the Customs Act, 1962. Explanation was sent mentioning the non-involvement of the crew in dealing with any narcotics/drugs. The learned Single Judge of the High Court passed an order directing the Coast Guard Authorities and the Customs Authorities to pay the wages lawfully due to the crew members on board in the ship and that the crew should be deported to their country. Against that an appeal was filed and in the appeal it was held that the Merchant Shipping Act was not applicable to foreign seamen and that the crew member should file a suit and pray that the application in the pending matter is not maintainable and also that the maritime lien for wages on the ship extinguishes on the ship being confiscated by the Government.

8. It is on this factual background that the Supreme Court dealt with the scope and extent of maritime liens, recognised by the admiralty jurisdiction all over the world and held that it is a privileged claim upon a ship and remains attached to the property travelling with it through changes of ownership and that the seamen's right to wages was put on a high pedestal and that a seaman had a right to cling to the last plank of the ship in satisfaction of his wages. The Supreme Court held that the appellant and other crew members are entitled to a fair and just treatment and the confiscation of the ship shall not be treated as a prized catch of an enemy ship deserving condemnation without exception and that the basic human rights afforded under the Constitution, more so under Article 21 shall be protected . It is in that context that the Supreme Court, while dealing with the wages of the seaman, held that Article 21 of the Constitution of India protects that right. It is very important to remember that these seamen were Ukrainian seamen who had no other recourse under law if their seamen's lien was not protected. It was a real question of survival and protection of their lives.

9. The learned counsel for the petitioner submitted that the impugned order was clearly mala fide and it was issued only to thwart the petitioner from obtaining the benefits of his success in W.P. No.6712 of 2007 dated 13-04-2007. The writ petitioner may succeed on the peculiar circumstances of the case but the question is whether he is entitled to Article 21 of the Constitution of India merely because he is placed under suspicion.

10. We look to guidance as to the extent to which the protection of the Article has been given by the Supreme Court in various cases, viz. (i) B.C. Chaturvedi Vs. Union of India, A.I.R. 1996 S.C.C. 484, (ii) Narendra Kumar Chandla Vs. State of Haryana and others, (1994) 4

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S.C.C. 460 and (iii) State of H.P. Vs. Raja Mahendra Pal and others, (1999) 4 S.C.C. 43.

(i) In B.C. Chaturvedi's case (cited supra), disciplinary proceedings were initiated against a public servant on the basis of charges of violation of Conduct Rules and misconduct of being in possession of property disproportionate to the source of income. There was delay in initiation of proceedings and the question was raised that whether the delay in initiating the disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. The paragraph further reads as follows :

> "In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution."

(ii) In Raja Mahendra Pal's case (cited supra), a former ruler filed a writ petition seeking the issuance of mandamus for monetary gains which were permissible to the State Government on the basis of the decision of the Pricing Committee. The High Court granted the prayer equating him with the Government and it was found that he was deprived with the right to life as envisaged by the Article 21 of the Constitution of India. Against that, the State filed an appeal. It was contended on behalf of the State that the rights of the respondent was based on a contract and he had to file a suit and the discretionary powers vested under Article 226 of the Constitution of

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India could not have been exercised in his favour. The Supreme Court while finding submission of the learned counsel for the appellant was not inclined to allow the appeal and dismiss the writ petition sole on this ground :

> "For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of the utmost importance, violation of which, as and when found, directly or indirectly, or even remotely, has to be looked upon with his disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claims relating to the legal or contractual rights of the parties completely ignoring the person approaching the court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution."

(iii) In Narendra Kumar Chandla's case (cited supra), which was cited by the learned Government Pleader, the Supreme Court invoked Article 21 in that particular case but only because the employee had his right arm completely amputated due to sarcoma – though the cancer had been arrested – and in that case, which is prior to the coming into force of the Disabilities Act, the Supreme Court stepped in to protect the employee's right to livelihood, which is an integral facet of his right to life. A Sub-station Attendant was operated for Chondrosarcoma, and his right arm was completely amputated. The Doctor recommended that he can resume normal duty. He was appointed as Carrier Attendant on a lower pay scale. Aggrieved by that, he moved the Court. The Supreme Court observed :

> "...when an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must take every endeavour to adjust him in a post which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is

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unjust.

...

Necessarily, therefore, his last drawn pay as to be protected."

11. In General Manager, Kisan Sahkari Chini Mills Ltd., Vs. Satrughan Nishad (2003) 8 S.C.C. 639, the Supreme Court held that mandamus can be issued against a private person or a body only if the infraction alleged is in performance of public duty and the decision reported in (1989 (2) SCC 691) was referred to and the relevant paragraph is extracted below :

"Reference in this connection may be made to the decisions of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani, (1989) 2 S.C.C. 691, in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of *K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg., (1997) 3 S.C.C. 571 and V.S.T. Industries Ltd. v. Workers' Union (2001) 1 S.C.C. 298*, the same principle has been reiterated. Further, in the case of VST Industries Ltd. (cited supra), it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked."

12. In *Binny Ltd. and Anr. Vs. V. Sadasivan, J.T. 2005 (7) S.C. 214*, the Supreme Court delienated what would be a private law remedy and a public law remedy and that indication of jurisdiction of the High Court under Article 227 of the Constitution is for obtaining a public law remedy. In this case, they also referred to General Manager, Kisan Sahkar Chini Mills Limited, Sultanpur, U.P. vs. Satrughan Nishad and Ors. (cited supra), wherein it was held that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function. The following extracts are relevant :

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"19. In VST Industries Ltd. v. Workers' Union, J.T. 2001 (1) S.C. 36, the very same question came up for consideration. The appellant Company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows:- (SCC p.305, para 7)

"7. In De Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions –

(*1*) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a 'public' or a 'private' body.

(*2*) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(*3*) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two

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situations judicial review will not normally be appropriate even though the body may be performing a public function:

(*a*) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(*b*) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed upon by the parties (express ly or by necessary implication), that regime, and not judicial review, will normally govern the dispute."

26. It is important to understand the real dicta laid down in the background of the facts involved therein. The appellant was a public sector undertaking and in that view of the matter it was held that the contract of employment and the service rules which gave absolute and arbitrary power to terminate the service of the employees were illegal. It may be also noticed that the termination clause was referred to in the context of the contract read as a whole and no enquiry was contemplated under the rules even in the case of allegation of misconduct and it was held to be violative of the principles of natural justice. It was also held to be violative of Section 23 of the Contract Act as it was opposed to public policy to terminate the services of the employee without conducting an enquiry even on the ground of misconduct. Public-policy principles can be applied to employment in public sector undertakings in appropriate cases. But the same principles cannot be applied to private bodies. There are various labour laws which curtail the power of the employer from doing any anti-labour activity. Sufficient safeguards are made in the labour law enactments to protect the interests of the employees of private sector. The service rules and regulations which are applicable to government employees or employees of public sector undertakings stand on a different footing and they cannot be tested on the same

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touchstone or enforced in the same manner. Therefore, the decision rendered by this Court in *Central Inland Water Transport Corporation Ltd., V. Brojo Nath Ganguly, J.T. 1986 (2) S.C. 278* is of no assistance to the respondents in Civil Appeal No. 1976 of 1998 or to the appellant in the civil appeal arising out of SLP (Civil) No. 6016 of 2002.

27. In the second case also, namely, *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, J.T. 1990 (3) S.C. 725,* the appellant was a public sector undertaking and the main controversy was about the term "other authorities" under Article 12 of the Constitution. Both in *Central Inland* and *DTC cases* , the decision of a public sector undertaking was under challenge and the question raised was whether the principles of natural justice and fairness were to be applied. It was held that this Court has got jurisdiction to consider this question by invoking the principles of judicial review. But it would be noticed that in both the cases, it was a public sector undertaking coming within the purview of "other authorities" under Article 12 of the Constitution."

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to *Halsbury's Laws of England* , 3rd Edn., Vol. 30, p.682 :

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> "*1317* . A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public duty or public function. This is stressed in Marappan's case (cited supra) in Clauses (iii) and (iv) extracted in paragraph 5 of this judgment. The facts of each case decide the point. The above cases are referred to only for highlighting what the Supreme Court has observed in this context.

13. The following cases do not involve a co-operative society, but we refer to them only to show in what circumstances the Supreme Court invoked Article 21 to protect the rights of employees.

(i) In State of Maharashtra Vs. Chandrabhan Tale, (1983) 3 S.C.C. 387, a Head Constable was prosecuted under Section 161, IPC and was sentenced to undergo rigorous imprisonment for six months under Section 161, IPC and for one year and fine Rs.100 under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. He was allowed to continue on bail on the same terms pending consideration of the appeal in the High Court and was subsequently acquitted by the High Court. The question that was considered by the Supreme Court was whether the payment of Re 1 per month as subsistence allowance was reasonable and in that context the Supreme Court invoked the protection of Article 21 of the Constitution.

(ii) In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., and another, (1999) 7 S.C.C. 679, a security officer was placed under suspension and he was not paid subsistence allowance. He fell into serious financial difficulties which prevented him from participating in the departmental proceedings. There was simultaneous prosecution of the criminal case as well. There the Supreme Court referred to non-payment of subsistence allowance as slow-poisoning as an inhumane act which has an unpropitious effect on the life of an employee and that when an employee is suspended the fundamental right including the right under Article 21 are not surrendered by the employee.

14. Every illegal order of suspension or termination will not *ipso facto* amount to violation of Article 21. But there may be certain circumstances, as in a case of exclusion of an employee affected by HIV AIDS or an employee who has been rendered immobile by an accident or cases where the rights of huge number of employees are involved or where their very existence is jeopardized, where the employee may justifiably invoke Article 21 of the Constitution and

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seek protection by filing a writ petition. But every case of suspension or deprivation of wages for a period or termination will not entitle the employee of a co-operative society to move the writ Court and contend that the right of protection under Article 21 has been violated. The employees have adequate statutory protection in law.

15. In Secy., State of Karnataka Vs. Uma Devi (2006) 4 S.C.C. 1, while considering the question of regularisation in service, it was argued that right to life protected by Article 21 would include the right to employment. The Supreme Court held thus :

> "50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.
>
> 51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to

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employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(*a*) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution."

16. For every alleged or imagined invasion of his rights, an employee of a co-operative society cannot move the writ court on the ground that his rights under Article 21 have been infringed. The effect of the Supreme Court cases cited in Marappan's case (cited supra) and the propositions set down in Marappan's case (cited supra) cannot be set at naught merely by mentioning Article 21, even if the order is illegal.

17. Again, as held by the Supreme Court in Raja Mahendra Pal's case (cited supra), Article 21 while including of attributes of life cannot be extended to the extent that all sorts of claim relating to legal or contractual rights could be brought within its ambit ignoring the person aggrieved and the nature of the right violated. Though the cases cited may not involve a co-operative society, the above position applies to the present case *a fortiori*. The cases where Supreme Court had invoked Article 21 as in Narendra Kumar Chandla's case (cited supra) or Konavalov's case (cited supra) were not grievances of an ordinary nature or a routine nature, as we have seen.

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18. Therefore, every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 enabling him to move the writ court. We cannot ignore the settled position that applications to secure performance of obligations owed by a Government or a society towards its employees or to resolve any private dispute cannot be decided on the basis of the Article 21. The appellant herein may perhaps have a good case on other grounds. But the order of suspension suspending him from the post of Secretary does not amount to infringement of Article 21 and while the decision in the judgment of the Division Bench in The Nazarath Urban Co-operative Bank Ltd.'s case (cited supra) may be right on the facts of that case, the observations made regarding the application of Article 21 need to be and are clarified as above. The mere fact that he was kept under suspension beyond one year without the approval of the Registrar cannot be said to violate Article 21. It must be seen whether the invocation of Article 21 is justified in the particular case and whether the order challenged by a workman of a co-operative society is of such a nature that it would truly take away his right under Article 21 of the Constitution and that it is taken away otherwise than by due process of law.

19. The reference is answered accordingly.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Joint Registrar
co-operative Societies
Vellore Region, Vellore

2. The Special Officer
Sinampattadai Primary Agricultural
Co-operative Bank, K.R. Thangal Post
Katpadi Taluk, Vellore District.

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